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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 10/044,856 | 11/01/2001 | Quynh T. Pham | J6655(C) | 9814 |
| 201 | 7590 | 06/16/2004 | EXAMINER | |
| UNILEVER PATENT DEPARTMENT 45 RIVER ROAD EDGEWATER, NJ 07020 | | | FUBARA, BLESSING M | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 1615 | |

DATE MAILED: 06/16/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | | |
|------------------------------|---------------------------------------|------------------------------------|--|
| Office Action Summary | Application No. 10/044,856 | Applicant(s) PHAM ET AL. | |
| | Examiner Blessing M. Fubara | Art Unit 1615 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 3-8 and 10-14 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 3-8 and 10-14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date, _____. |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____. | 6) <input type="checkbox"/> Other: _____. |

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DETAILED ACTION

Examiner acknowledges receipt of request for extension of time and request for continued examination filed 03/15/04. Claims 1, 3-8 and 10-14 are pending.

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 03/15/04 has been entered.

Claim Rejections - 35 USC § 103

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

3. Claims 1, 2-8 and 10-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Beerse et al. (US 6,294,186).

Beerse discloses an antimicrobial composition (abstract) and the anti-microbial composition can be applied to the skin (column 4, lines 17 and 29 and column 8, lines 16-27). The composition contains water or alcohol solution as a carrier (column 9, lines 32 and 34). The composition comprises hydrophilic gelling agents amongst which is listed PEMULEN TR-1 and oleogels; the composition may also contain from about 0.1% to about 20% lipophilic skin moisturizing agents/emollients such as polymethyl siloxanes, methylphenylpolysiloxanes, dimethicones, cyclomethicones, alkyl siloxanes and oils (column 10, line 7 to column 11, line 16). Dimethicones may also be present in the composition (column 14, line 13-33).

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Dimethicone copolyol emulsifiers are useful in Beerse (column 15, line 36 to column 16 line 59). Beerse's composition may also contain conditioning agents selected from humectants, moisturizers or skin conditioners in an amount of from about 0.1% to about 20% and examples of moisturizing agents are polyhydroxy alcohols such as sorbitol, glycerol, hexanetriol, propylene glycol (column 36, lines 14-35). The composition of Beerse contains one or more thickening agents and carboxylic acid polymers are examples of thickening agent that can be contained in the composition and specific examples of PEMULEN TR-2 and PEMULEN TR-1 are listed (column 36, line 54 to column 38 line 23). Beerse's composition optionally contains detackifying agents that reduce stickiness or tack associated with humectants and/or gelling agents (column 38, lines 33-43). Beerse also discloses that silicone elastomers are also useful as detackifying agents and cyclomethicone and dimethicone crosspolymer blend is listed as example of the silicone elastomer (column 40, lines 33-63).

The various compositions prepared by Beerse are hand sanitizers (examples 1-5 and 14-18), sanitizing wipes (examples 6-10), hand and body moisturizers (examples 11-13 and 19-20), liquid soaps (examples 21-25), solid soap (example 26), dandruff shampoo (example 27-28), foaming facial and body wash (example 32), hard surface sanitizers (examples 29-31 and 33-35), lotioned tissue (examples 36-38), intranasal formulation (examples 39 and 40) and mouth wash (example 41 and 42). Examples 16-18 teach hand compositions that contain 20% glycerin, 8% dipropylene glycol, 22.8-28.09% water, 4% isopropyl palmitate, 9.1-13% cyclomethicone, 11-14.55% cyclomethicone/dimethicone copolyol, salicylic acid, fragrance and synthetic wax. Examples 14 and 15 contain Pemulen TR-1 and Carbopol in addition to glycerin, butylene glycol, cyclomethicone and dimethicone copolyol, cyclomethicone and dimethicone,

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dimethicone copolyol, salicylic acid and water. The carbopol in examples 14 and 15 is a wetting polymer.

The generic claim of the instant composition is directed broadly to polyhydric alcohol, polymeric wetting agent and cosmetically acceptable vehicle except for specifying amount of the humectant and a range if amount of the polymeric wetting agent.

In examples 14-15, Beerse clearly teaches the composition of the instant invention except that the amount of the polyhydric alcohol is 3.08, which is the sum of the amount of glycerin and butylene glycol. This amount of polyhydric alcohol differs from the recited amount of at least 10% and about 10% to about 90%. At the same time, in examples 16-18, Beerse teaches compositions that can be applied to the hands to provide antibacterial effect in the same way as the compositions in examples 14 and 15 provide for antibacterial effect. The compositions in examples 16-18 contain 28% of polyhydric alcohol, which is the sum of the amounts of glycerin and dipropylene glycol. There is thus a suggestion in Beerse that a hand antibacterial composition could contain polyhydric alcohol in amounts of about 20-28%.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to increase the amount of polyhydric alcohol in the hand composition in examples 14 and 15 of Beerse from 3.08 to about 20-28 %, since Beerse in examples 16-18 teaches hand composition that contains 20-28% polyhydric alcohol, with the expectation of obtaining a hand composition that soothes, softens and moisturizes the skin while providing antibacterial effect.

4. Applicant's arguments filed 03/15/04 have been fully considered but they are not persuasive.


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Applicants argue that Beerse does not disclose the instant antimicrobial composition because Beerse does not teach Pemulen TR-1. The claims are directed to wetting agents and Pemulen TR-1 is a wetting agent. Polysiloxanes are elastomers and the -methicones are silicone oils.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Blessing M. Fubara whose telephone number is (571) 272-0594. The examiner can normally be reached on 7 a.m. to 3:30 p.m. (Monday to Friday).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman K. Page can be reached on (571) 272-0602. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Blessing Fubara
Patent Examiner
Tech. Center 1600